United Nations A/HRC/30/32

General Assembly

Distr.: General
27 July 2015

Original: English

Human Rights Council
Thirtieth session
Agenda items 2 and 10
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Technical assistance and capacity-building

Situation of human rights and the activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo

Report of the United Nations High Commissioner for Human Rights

Summary

In its resolution 27/27, the Council invited the United Nations High Commissioner for Human Rights to submit a report to it at its thirtieth session. The present report on the situation of human rights and the activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo assesses the progress made by the Government of the Democratic Republic of the Congo in implementing the recommendations made by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other United Nations human rights mechanisms. The report covers the period from June 2014 to May 2015.

The High Commissioner commends the efforts made by the authorities to address the recommendations, which have resulted in important developments, including the establishment of the National Human Rights Commission and the implementation of the action plan of the Armed Forces of the Democratic Republic of the Congo (Forces armées de la République démocratique du Congo — FARDC) on fighting sexual violence. The High Commissioner also notes progress in the fight against impunity, particularly with the conclusion of several emblematic trials, including those of two former FARDC soldiers who were on a list of five senior army officers who had allegedly committed serious crimes. The list had been handed over to the President, Joseph Kabila, by a Security Council delegation in May 2009.

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Despite such efforts, the High Commissioner points out that the human rights situation remains of great concern throughout the country. The United Nations Joint Human Rights Office registered the highest number of human rights violations and abuses, committed by elements of over 30 armed groups as well as by FARDC soldiers, in the east. The reporting period was also marked by serious incidents that affected the protection of civilians in the east of the country.

In the western provinces, particularly in Kinshasa, the deplorable shrinking of democratic space resulted in serious violations of fundamental freedoms by security forces, mainly targeting political opponents, human rights defenders and protesters. These developments are particularly worrisome ahead of the upcoming electoral cycle.

The High Commissioner deeply regrets the October 2014 decision of the Government to expel the Director of the United Nations Joint Human Rights Office following the publication of the joint report by the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo and OHCHR on human rights violations committed between 15 November 2013 and 15 February 2014, by agents of the Congolese national police during Operation Likofi in Kinshasa. The High Commissioner calls upon the Government to reinforce its collaboration with the Joint Office.

The High Commissioner encourages the Government to implement all recommendations made in the present report, and reiterates the engagement of his Office to support the authorities' efforts to protect and promote human rights.

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I. Introduction

1. Prepared pursuant to Human Rights Council resolution 27/27 on technical assistance and capacity-building for human rights in the Democratic Republic of the Congo, the present report provides an overview of the situation of human rights and the activities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the country through the United Nations Joint Human Rights Office between June 2014 and May 2015.

2. The report highlights major human rights developments and focuses on issues relating to fundamental freedoms[1] and protection of human rights defenders, journalists and political opponents; sexual violence; extrajudicial killings and summary executions; torture and other cruel, inhuman and degrading treatment; the fight against impunity; and protection of civilians. In relation to these issues, the report assesses progress made by the Government in implementing the recommendations of OHCHR and other United Nations human rights mechanisms.

II. Main human rights developments

3. The Government made considerable efforts to advance the human rights situation during the reporting period. In particular, the appointment of the members of the National Human Rights Commission on 1 April 2015 is to be welcomed, as is the adoption, on 29 October 2014, of the action plan of the Armed Forces of the Democratic Republic of the Congo (Forces armées de la République démocratique du Congo — FARDC) on fighting sexual violence. Progress was also registered in the fight against impunity, notably with the conclusion of several emblematic trials, including those of two former FARDC officers who were on the list of five senior army officers handed over to the President, Joseph Kabila, in May 2009 by a delegation of the Security Council. These senior officers were accused of committing serious crimes, including rape and other forms of sexual violence.

4. The human rights situation remains, however, of serious concern throughout the country. The conflict-stricken provinces of the eastern Democratic Republic of the Congo, namely Orientale, North Kivu, South Kivu and North Katanga, continued to register the highest number of human rights violations and abuses, perpetrated by elements of over 30 armed groups, as well as by FARDC soldiers in the context of military operations against some of those groups. Reprisals for real or perceived collaboration of the population with other armed groups or with security and defence forces, or grievances along ethnic lines, were often motives for the attacks. If considered separately among other actors, FARDC elements have been the main perpetrators of human rights violations for most of the reporting period, with the Congolese national police overtaking them for the months of January, February and March 2015.

5. Increasing restrictions on the political space and violations of the rights to freedom of expression, association and peaceful assembly were mainly registered in the western provinces, particularly in Kinshasa. Agents of the Congolese national police and FARDC soldiers (including the Republican Guard) have used excessive force and lethal weapons to restrict those rights and freedoms during demonstrations and political rallies. The arbitrary arrest and detention, sometimes incommunicado, of demonstrators also raised due process concerns.

[1] Mainly the rights to freedom of expression, association and peaceful assembly.

6. The Government's expulsion in October 2014 of the Director of the United Nations Joint Human Rights Office following the publication of a joint report by the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and OHCHR on human rights violations committed by agents of the Congolese national police during Operation Likofi was an alarming development and the High Commissioner urged the Government to investigate continuing acts of intimidation and threats against United Nations human rights staff, and hold those responsible accountable. As the country moves towards an electoral cycle, there are serious concerns about further restrictions to political space and increased human rights violations targeting individuals critical of the Government.

A. Fundamental freedoms and protection of human rights defenders, journalists and political opponents

7. The Human Rights Committee recommended that the Government guarantee freedom of speech and of the press and other media, and ensure that any restriction on press and media activities be strictly compatible with article 19 (3) of the International Covenant on Civil and Political Rights (see CCPR/C/COD/CO/3, para. 22). During the universal periodic review of the Democratic Republic of the Congo in 2009, it was recommended that the Government develop a legal framework to protect and ensure the security of journalists, human rights defenders, members of civil society and the political opposition (see A/HRC/13/8, para. 96 (22–26)).

1. Current situation and action taken by the Government

8. During the reporting period, the Government was responsible for a high number of violations of the rights to freedom of expression, association and peaceful assembly. Moreover, there were numerous cases of excessive use of force by security forces that resulted in extrajudicial killings and other human rights violations mainly targeting political opponents, human rights defenders and media workers particularly during demonstrations. In early 2015, political opponents were targeted by security and defence forces, and several demonstrations were violently repressed, including through lethal force.

9. On 17 January 2015, the lower house of Parliament approved a law containing a controversial provision, making the holding of the 2016 presidential and legislative elections conditional upon the conduct of a national census. Many civil society actors interpreted that as an attempt to delay the elections and thereby to allow President Kabila to prolong his tenure. That led to widespread discontent, with large demonstrations organized by members of the opposition and civil society activists around the country in the first quarter of 2015.

10. On 19 January 2015, the Government deployed riot police and FARDC soldiers, including the Republican Guard, to respond to the protests, mainly in Kinshasa and Goma. Disproportionate force was used by national security forces against unarmed civilians. According to information gathered by United Nations Joint Human Rights Office, from 19 to 23 January 2015, at least 20 persons were killed and 75 injured by the police and the Republican Guard.

11. In the context of the demonstrations, over 500 individuals were arrested across the country. Several leaders of the opposition were locked up by the police in their headquarters on 20 January 2015 in Kinshasa, so that they were unable to join the demonstrations. On 21 January, in Lubumbashi, Katanga Province, the police reportedly arrested 13 members of the opposition party, Union pour la démocratie et le progrès social, at the party's local headquarters.

12. On 15 March 2015, around 30 civil society activists, including three nationals of Senegal, one of Burkina Faso, four of France and one of the United States of America, were reportedly arrested in Kinshasa by officers of the Congolese national police, the National Intelligence Agency and the military police during a workshop to encourage the participation of the youth in the democratic process in the Democratic Republic of the Congo, organized by the civil society organization Filimbi. All were accused of attempting to organize an insurrection in the country and detained on Agency premises in Kinshasa. The foreign nationals were released, some were expelled from the country, and at least two Congolese were still being detained at the time of drafting the present report. In Goma, four civil society activists of the national non-governmental organization (NGO) Lutte pour le changement were arrested, on 7 and 8 April, during a public gathering requesting the release of their colleagues arrested in Kinshasa in the context of the workshop. They were charged with instigation to disobey public authority and provisionally released on bail by the Court of Appeal in Goma on 29 April.

13. While many demonstrators were charged with looting, destruction of property and insurrection, no State agent has so far been investigated or prosecuted for the extrajudicial executions and other violations committed to control the demonstrations. This raises questions as to the independence of the judiciary when dealing with cases against political opponents and civil society actors.

14. On 20 January 2015, the Government blocked access to text messaging services, the Internet and social media for several weeks to prevent the organization of further demonstrations. Those services were re-established, respectively, on 7 and 8 February and in early March. Some radio programmes and stations were also suspended during that period. For instance, on 17 January, *Canal Kin Télévision*, which belongs to opposition leader Jean-Pierre Bemba, and *Radio Télé Catholique Elikya* were suspended for having allegedly broadcast inflammatory messages in connection with the draft electoral law. The radio branch of *Radio Télé Catholique Elikya* was reopened a few days later but its television service remains suspended. The signal of *Radio France International* was suspended on 21 January.

2. Action taken by the United Nations Joint Human Rights Office

15. The United Nations Joint Human Rights Office followed closely the situation of civil society activists and political opponents arrested in connection with demonstrations and meetings in Kinshasa and Goma. For instance, it followed the case of Christopher Mutanda Ngoy, President of the NGO Synergies for Congo and Human Rights and an active member of the Save the Congo campaign, who was arrested on 21 January 2015 in Kinshasa and held incommunicado in the facilities of the National Intelligence Agency for three weeks before being brought before a judicial official on 10 February. At the time of writing the present report, he was being held in pretrial detention at Makala prison, in Kinshasa, facing 10 criminal charges. The Joint Office also followed the case of Fred Bahuma, the leader of Lutte pour le changement, who was arrested by agents of the Congolese national police and the National Intelligence Agency on 15 March, in Kinshasa, during the workshop organized by Filimbi.

16. Among political opponents, the provincial President of the opposition party Rassemblement congolais pour la démocratie/Mouvement de libération de Kisangani, Ernest Kyaviro, was arrested on 22 January 2015 in Goma and transferred to National Intelligence Agency facilities in Kinshasa on 23 January. He was transferred to Makala central prison in Kinshasa on 20 April, after almost three months in detention, with limited access to external visitors.

17. The United Nations Joint Human Rights Office also provided legal support and targeted multifaceted protection assistance to human rights defenders, journalists and

victims and witnesses of serious human rights violations who faced risks of reprisals for testifying in trials, as well as to human rights defenders and journalists who received threats owing to their work. It thus dealt with 138 cases of threats and human rights violations against 86 human rights defenders, 16 journalists and 36 victims and witnesses of human rights violations throughout the country.

18. Despite extensive advocacy by representatives of NGOs and human rights defenders in recent years, no significant progress has been made towards the adoption of the bill on the protection of human rights defenders. On 1 November 2013, with the support of the United Nations Joint Human Rights Office, human rights organizations, parliamentarians and representatives of the Ministry of Justice and Human Rights held a technical workshop, during which participants agreed to changes in the draft legislation. However, the draft was not submitted to the National Assembly because parliamentarians argued that some of their peers would consider that it would only grant protection to human rights defenders as a specific category of people. Consequently, members of civil society have commissioned a study on the constitutionality of the draft legislation with a view to persuading parliamentarians to adopt it. The conclusions of the study were presented to the Platform of Human Rights Defenders on 27 March 2015 and to a larger group of human rights activists and partners on 17 April in Kinshasa.

B. Sexual violence

19. For many years, successive High Commissioners for Human Rights and international human rights mechanisms have urged the Government to take more effective measures to combat impunity for sexual violence. During the universal periodic review of the Democratic Republic of the Congo in 2014, it was recommended that the Government improve the implementation of national legislation on sexual violence and ensure that perpetrators are brought to justice (see A/HRC/27/5, paras. 134.60 and 134.85). The Committee on the Elimination of Discrimination against Women recommended that the Government ensure access to justice for all women affected by sexual violence during conflict by providing appropriate funding to military jurisdictions. It also recommended that the Government ensure that the justice system be responsive to gender-based violence, including by increasing the number of women judges dealing with cases of sexual violence in conflict-affected areas and of judges and prosecutors specialized in sexual violence (see CEDAW/C/COD/CO/6–7, para. 10 (c)). Other recommendations have been made to improve victims' access to comprehensive medical treatment and psychological support (ibid., para. 10 (f)).

1. Current situation and action taken by the Government

20. Sexual violence remains a major concern in the Democratic Republic of the Congo, as parties to the conflict continue to use rape as a weapon of war. During the reporting period, the United Nations Joint Human Rights Office documented 550 cases of rape throughout the country. Approximately 81 per cent of them (448 victims) were raped in the eastern provinces of North Kivu, South Kivu and Orientale. Over 44 per cent (243 victims) were allegedly raped by State agents, including members of FARDC (165 victims), the Congolese national police (72 victims), the National Intelligence Agency (2 victims) and other State actors (4 victims). Armed groups were responsible for raping approximately 56 per cent (307 victims) of the total. Among the armed groups, the main perpetrators were Mai Mai Simba/Lumumba members, who had been identified as responsible for the rape of 80 victims.

21. Survivors of sexual violence still do not have access to legal services, reparation and remedy. There are no life-saving health and psychosocial services, such as fistula surgery,

access to antiretroviral drugs and safe abortion services, particularly in conflict-affected areas where State authorities are absent or weak, and the infrastructure is insufficient or inadequate. Holistic support (legal, medical and psychosocial) can only be found in and around urban areas, where they are far from adequate or sufficient. In isolated areas where the justice system is absent or weak, practices such as amicable arrangements are frequently resorted to, whereby the victim's family agrees with the perpetrator's relatives to a financial settlement or other transactions (including marriage), in order to "close" the case.

22. Nevertheless, during the reporting period, there were landmark advances to combat conflict-related sexual violence. Military tribunals convicted 30 individuals, including 20 FARDC members, 9 Congolese national police elements and 1 member of an armed group (a combatant from the Forces démocratiques de libération du Rwanda) for sexual violence.[2] The trials of General Jérôme Kakwavu and Lieutenant Colonel Bedi Mobuli Engangela, alias "Colonel 106", took place on 7 November and 15 December 2015, respectively. Those two individuals were on a list of five senior FARDC officers accused of rape, among other crimes, which a Security Council delegation provided to President Kabila in May 2009.[3]

23. On 14 July 2014, President Kabila appointed a Presidential Adviser on Sexual Violence and the Recruitment and Use of Children, Jeanine Mabunda, to accelerate national action on the issue and engage with the international community. Ms. Mabunda has undertaken field missions all over the country to familiarize herself with the situation of victims of sexual violence and observe mobile court hearings (supported by the United Nations Joint Human Rights Office) in Kiwanja, Rutshuru and Matadi. Victims highlighted to her the hindrances they faced in seizing justice and requested measures to facilitate such a process. In December 2014 Ms. Mabunda launched a toll-free number that victims, witnesses and families can call to denounce sexual violence and request assistance. At the time of drafting the present report, 432 calls had been made using the toll-free number and 50,000 awareness text messages had been sent to the population.

24. On 28 August 2014 the Government, together with the MONUSCO Sexual Violence in Conflict Unit, the United Nations Joint Human Rights Office and the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, launched the FARDC action plan against sexual violence. FARDC was directly involved in drafting a plan for addressing sexual violence committed by FARDC members. The plan included the creation of a specialized commission and the definition of five priority activities: prevention, repression, protection, communication, monitoring and evaluation. A commission was created on 29 October 2014 by a decree of the Vice-Prime Minister in charge of national defence and former combatants. It includes representatives of MONUSCO and the United Nations Entity for Gender Equality and the Empowerment of Women. During her mission to the Democratic Republic of the Congo from 29 to 31 March 2015, the Special Representative of the Secretary-General attended the official ceremony establishing the commission, during which 19 FARDC unit commanders signed a declaration reiterating their commitment to eradicating sexual violence.

25. In September 2014, reparations were paid to 30 victims who had been raped in Songo Mboyo and Equateur Provinces in 2003. The payment of individual financial compensation to survivors was unprecedented and marked a breakthrough in the administration of justice. This case points, however, to the length of time the execution of

[2] These figures are from June 2014–January 2015.

[3] The other three officers were Colonel J. C. Mosaia (on the run), Colonel Safari Kizungu (acquitted on 21 October 2011) and Lieutenant Colonel Papy Lungu Mobambo, alias "Pitchen" (deceased in Mitwaba, Katanga Province in 2012).

an award of reparations can take. The Presidential Adviser on Sexual Violence and the Recruitment and Use of Children has indicated that clearing the backlog of reparations awards and establishing a fund for this purpose are key priorities for her office.

2. Action taken by the United Nations Joint Human Rights Office

26. The United Nations Joint Human Rights Office remained occupied with building the capacity of seven NGOs running legal clinics to improve victims' access to justice. Between June 2014 and May 2015, with the support of the Governments of Canada and the United Kingdom of Great Britain and Northern Ireland, the Joint Office supported the work of NGOs in establishing 12 legal clinics in the Provinces of North Kivu, South Kivu, Katanga, Bas-Congo, Maniema and Kinshasa. These clinics provide free legal assistance to victims of sexual violence and accompany them through the judicial process, starting with the filing of complaints.

27. Over the reporting period, at least 400 victims of sexual violence received assistance from the legal clinics, which resulted in 103 sentences being pronounced against the perpetrators. The legal clinics also established referral mechanisms to holistic services for survivors to help them receive the urgent medical, psychosocial and rehabilitation services they need. During the reporting period, the United Nations Joint Human Rights Office further provided financial and technical support to six mobile court hearings involving cases of sexual violence — three trials in North Kivu, two in Bas-Congo and one in South Kivu.[4]

28. Between April and May 2015, the United Nations Joint Human Rights Office organized training for 39 medical doctors on forensic expertise on sexual violence and for 49 judicial police officers on handling sexual violence cases, in Kinshasa, Matadi, Kalemie and Kindu. The Joint Office also contributed to the creation of five mini-libraries in prosecutors' offices[5] for the special cells aimed at eradicating sexual and gender-based violence.

29. The United Nations Joint Human Rights Office remained committed within the framework of the Task Force on Children and Armed Conflict to matters pertaining to the implementation of the action plan to stop and prevent underage recruitment, sexual violence against children and other grave child rights violations that was signed by the Prime Minister of the Democratic Republic of the Congo and the Special Representative of the Secretary-General for the country and Head of MONUSCO on 4 October 2012.

C. Extrajudicial killings and summary executions

30. The Human Rights Committee recommended that the Government investigate, prosecute and punish all acts of extrajudicial killings and summary executions, and grant appropriate reparation to the families of victims (see CCPR/C/COD/CO/3, paras. 10 and 15). The Special Rapporteur on extrajudicial, summary or arbitrary executions also recommended that the Government implement fully its "zero tolerance" policy and investigate, arrest and prosecute FARDC members responsible for such killings (see A/HRC/14/24/Add.3, para. 109).

[4] The United Nations Joint Human Rights Office supported one trial in Kiwanja, Rutshuru territory, North Kivu; two trials in Kitchanga, Masisi territory, North Kivu; one trial in Kasangulu, Bas-Congo; and the trial of Colonel 106 in Bukavu, South Kivu.

[5] In Kinshasa, Matadi, Kindu, Kalemie and Lubumbashi.

1. Current situation and action taken by the Government

31. The United Nations Joint Human Rights Office continued to document extrajudicial killings by State agents during the reporting period in areas not affected by any conflict. From June 2014 to May 2015, State agents were responsible for at least 114 cases of extrajudicial executions targeting 140 victims not affected by armed conflict. In many cases, the disproportionate use of force and of firearms by FARDC, the Republican Guard and the Congolese national police has resulted in the killing of civilians.

32. During the reporting period, extrajudicial executions and enforced disappearances were committed by agents of the Congolese national police, including during Operation Likofi, conducted in Kinshasa between 15 November 2013 and 15 February 2014 against alleged street bandits named "*kulunas*".[6] So far, only one judgement has been rendered by the Military Garrison Tribunal of N'djili, in Kinshasa, on 24 June 2014, sentencing a chief superintendent of police to 10 years in prison for abduction, arbitrary arrest and forgery. No other action seems to have been taken so far by the competent authorities to identify and prosecute all the perpetrators of the violations committed in the framework of Operation Likofi.

33. As mentioned above, at least 20 civilians were killed in the context of demonstrations in Kinshasa and Goma in early 2015. In March 2015, a mass grave containing 421 bodies was discovered in the Maluku commune, Kinshasa Province. It is alleged that those corpses might be those of people reported missing in the context of Operation Likofi[7] and after the demonstrations in Kinshasa. The Government of the Democratic Republic of the Congo has pledged to conduct a transparent and credible investigation and shed light on the mass grave.

2. Action taken by the United Nations Joint Human Rights Office

34. On 15 October 2014, MONUSCO and OHCHR published a report on human rights violations committed by the Congolese national police in the context of Operation Likofi, documenting the killing of at least nine civilians and the enforced disappearance of 32 others, based on investigations conducted by United Nations Joint Human Rights Office. The report, intended to serve as an advocacy tool, indicated in its conclusions and recommendations corrective actions the Government could take with MONUSCO support.[8] Following the release of the report, the Government declared the Director of the Joint Office persona non grata.

35. In the framework of its mandate to fight against impunity, the United Nations Joint Human Rights Office followed up on serious incidents that had taken place in Lubumbashi and Kinshasa on 30 December 2013, during which at least 70 civilians were killed, mainly by FARDC soldiers. Those killings took place in the context of defence and security force operations against followers of political opponent and religious leader Joseph Mukungubila, who was believed to be behind the attacks against strategic Government installations in Lubumbashi, Kinshasa and Kindu. In addition, over 60 civilians and alleged coup plotters were arrested by the security forces between 30 December 2013 and 2 January 2014. The Joint Office continued to advocate investigations at the local level and with the Minister of Justice and Human Rights. To date, the Joint Office has no information indicating that an

[6] See *Report of the United Nations Joint Human Rights Office on human rights violations committed by agents of the Congolese national police during Operation Likofi in Kinshasa between 15 November 2013 and 15 February 2014*, published in October 2014.

[7] See paragraph 34 below.

[8] As per standard United Nations Joint Human Rights Office practice, the report was shared with the Government for comments prior to its publication and comments were annexed to the report.

investigation has been opened into the alleged killings by the security forces, nor has it received any response to a letter it sent on 14 August 2014 to the Minister, concerning the killings.

D. Torture and other cruel, inhuman or degrading treatment or punishment

36. The Committee against Torture recommended that the Government eliminate impunity for alleged acts of torture and other cruel, inhuman and degrading treatment by carrying out prompt, impartial and exhaustive investigations into all reported cases of torture and ill-treatment. It also stressed that the perpetrators should be tried and the victims properly compensated. Furthermore, the Committee requested the Government to ensure that those who reported cases of torture and ill-treatment be protected from intimidation or reprisals for reporting such cases (see CAT/C/DRC/CO/1, para. 6). During the 2014 universal periodic review of the Democratic Republic of the Congo, the Government was urged to initiate investigations to determine responsibilities in cases of allegations of abuse and torture by security forces — especially in places of detention — and prosecute perpetrators (see A/HRC/27/5, paras. 134.49–134.50).

1. Current situation and action taken by the Government

37. During the reporting period, the United Nations Joint Human Rights Office documented 605 violations by torture and other cruel, inhuman or degrading treatment, affecting 1,191 victims throughout the Democratic Republic of the Congo. Approximately 62 per cent of the violations (377) were committed by State agents — FARDC soldiers, Congolese national police elements and National Intelligence Agency agents, while 38 per cent of those violations (228) were reportedly committed by members of armed groups.

38. Some victims were reportedly tied up and beaten by members of the security forces upon arrest, allegedly for resisting extortion, participating in political activities, failing to participate in community work, committing petty theft or failing to pay a debt. For example, on 22 March 2015, in Kalembe, Masisi territory, North Kivu, six men were allegedly arbitrarily arrested and beaten by soldiers of the 804th regiment of FARDC for refusing to participate in community work organized by FARDC to build their military camp. On 2 January, in Buyinga, Lubero territory, two children resisted extortion of their property by a FARDC soldier and were arbitrarily arrested, tied up and beaten with batons, hammers and wooden sticks by FARDC soldiers. They were stripped half-naked and left an entire night tied to poles.

39. Some victims have been subjected to cruel, inhuman or degrading punishment, which may have constituted torture by security force elements, for taking part in activities perceived to be in opposition to or critical of Government actions. On 7 April 2015, Congolese national police elements allegedly arrested four militants of Lutte pour le changement in Goma during a public rally organized to request the release of civil society activists detained by the National Intelligence Agency in Kinshasa. The four activists reported that about 10 police agents had beaten them during their detention. On 13 April 2015, they were transferred to the central prison in Goma. The United Nations Joint Human Rights Office confirmed reports alleging that they had been subjected to degrading treatment or punishment during their detention. Prison guards forced them to collect excrement with their bare hands while cleaning the toilets, and beat them when they refused to obey. They were provisionally released on bail by the Court of Appeal in Goma on 29 April.

40. Members of armed groups have also subjected civilians to mutilation and cruel treatment during attacks on villages. For example, on 20 June 2014, in Makumo, Lubero territory, North Kivu, Mai Mai Lumumba combatants reportedly mutilated the ears of two civilians and wounded another's face with a machete for their alleged complicity in the killing of their leader.

41. The Government of the Democratic Republic of the Congo promulgated a national law against torture on 9 July 2011, but its implementation has been weak. During the reporting period, military tribunals convicted at least six individuals for torture — four Congolese national police agents and two FARDC soldiers — according to the United Nations Joint Human Rights Office. The low number of convictions may partly be due to a lack of awareness of the law against torture within the judiciary. More efforts are therefore required to raise awareness about the law across the country.

2. Action taken by the United Nations Joint Human Rights Office

42. The United Nations Joint Human Rights Office continued to monitor and report on incidents of torture and other cruel, inhuman or degrading treatment or punishment throughout the country.

43. Together with the Vice-Minister for Human Rights and United Nations police officers, representatives of the United Nations Joint Human Rights Office visited places of detention in Bas-Congo and Bandundu Provinces to evaluate arrest procedures and conditions of detention, and assess their compliance with national and international human rights standards. Despite the adoption by the Democratic Republic of the Congo of the Optional Protocol to the Convention against Torture in 2010, and the sustained advocacy conducted by the Joint Office, the Government has not yet set up a national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, as required by article 3 of the Optional Protocol.

E. Fight against impunity

44. The Human Rights Committee recommended that the Government take all appropriate steps to ensure that all human rights violations brought to its attention be investigated, and that those responsible for such violations be prosecuted and punished (see CCPR/C/COD/CO/3, para. 10). During the 2014 universal periodic review of the Democratic Republic of the Congo, the Government was in particular urged to take the measures necessary to put an end to impunity in all cases of violence against women (see A/HRC/27/5, para. 134.61).

1. Current situation and action taken by the Government

45. Positive and significant developments were observed in the fight against impunity, some of which resulted from activities conducted with the support of the United Nations Joint Human Rights Office and its partners. During the period under review, according to information received by the Joint Office, at least 60 Congolese national police agents and 165 FARDC soldiers were convicted throughout the country for various human rights-related offences.

46. On 15 December 2014, in Bukavu, the Military Court of South Kivu rendered its verdict in the case of Lieutenant Colonel Bedi Mobuli Engangela, alias "Colonel 106", who was charged with crimes against humanity in connection with grave crimes committed in South Kivu between 2005 and 2007, including rape, sexual slavery and murder. The Court convicted him of crimes against humanity for murder, rape, sexual slavery, imprisonment and severe deprivation of liberty, and sentenced him to life imprisonment. The Court also

condemned him, in solidum with the State, to the payment of damages to the civil parties. On 7 November 2014, the High Military Court convicted General Jérôme Kakwavu for his individual and command responsibility for rape and war crimes, and sentenced him to 10 years of imprisonment. General Kakwavu was a former commander of the Forces armées du peuple congolais, a militia active in the district of Ituri between 2003 and 2005. Despite the length of the proceedings, the convictions of Colonel 106 and General Kakwavu represent an important step in the fight against impunity.

47. Other developments include the conviction of a former high-level commander of the Forces démocratiques de libération du Rwanda, Kizimi Lenine Sabin, for crimes against humanity. He was sentenced to life imprisonment by the Military Garrison Tribunal of Bukavu on 29 December 2014, after mobile court hearings supported by MONUSCO. On 17 November 2014, in Beni, the Military Operational Court of North Kivu rendered its judgement in the case concerning the assassination of Colonel Mamadou Ndala after a series of mobile court hearings held in Beni territory. The Court convicted five FARDC officers and six commanders of the Allied Democratic Forces-National Army for the Liberation of Uganda for the assassination.

48. In November 2014, Justin Banakoli, alias "Cobra Matata", leader of the Forces de résistance patriotiques en Ituri, indicated that he was going to surrender to FARDC, along with 812 of his combatants. However, negotiations with the Government failed as Cobra Matata insisted on a general amnesty for himself and his men, as well as integration of his forces into FARDC, with recognition of their ranks. He was arrested on several charges, including that of child recruitment, and transferred from Bunia to Kinshasa Ndolo military prison on 5 January 2015 with MONUSCO support. He is accused of desertion, forming a rebel movement, crimes against humanity, war crimes, child recruitment and attempting to escape from detention.

49. Many challenges remain in the fight against impunity and in the administration of justice. Several case files considered emblematic owing to the high number of victims or the nature of the violations and the profile of the perpetrators, remain unresolved due to lack of action by judicial authorities to hold the perpetrators accountable. OHCHR is concerned moreover about the lack of appeal for the accused, tried in first instance before the Cour militaire opérationnelle, the Supreme Court and the Military High Court, as well as the imposition of the death penalty, despite a de facto moratorium on its application since 2003.

50. On 2 June 2015, the National Assembly adopted draft legislation on the implementation of the Rome Statute of the International Criminal Court, which the Democratic Republic of the Congo ratified in 2002. A large conference organized by the Minister of Justice and Human Rights was held, from 27 April to 2 May, to assess the situation of the justice system and suggest reforms. Several important recommendations relating to the fight against impunity and witness and victim protection were adopted on that occasion.

2. Action taken by the United Nations Joint Human Rights Office

51. The sentencing of General Kakwavu and Colonel 106 marked the culmination of years of effort (seven in the case of Colonel 106) by MONUSCO and other national and international partners in the fight against impunity. The United Nations Joint Human Rights Office supported the process from the investigation, reporting and advocacy phases to the judicial investigation process and the trial. The Joint Office also worked closely with the authorities to set up a witness protection system allowing witnesses to testify without fear of reprisal and implemented protection measures for victims and witnesses throughout the pretrial and trial phases, which resulted in pretrial support being provided to 100 victims and in 80 victims testifying anonymously.

52. The United Nations Joint Human Rights Office continued to assist the judicial authorities in the fight against impunity by providing, among others, technical and logistical support to bring investigators and magistrates to sites where human rights violations had been committed. During the reporting period, the Joint Office was able to support nine joint investigation team missions,[9] conducted by judicial authorities in various parts of the country.

53. The United Nations Joint Human Rights Office assisted the judicial authorities through support to mobile court hearings, especially in the east, where the request from military justice was higher. For example, on 7 March 2015, the military garrison tribunal of Goma sitting in mobile court hearings in Kitchanga, Masisi territory, North Kivu, convicted 20 State agents for various crimes, including murder, sexual violence, armed banditry and illegal possession of weapons of war. MONUSCO supported the trial through logistic and financial support as well as in matters pertaining to the protection of victims, witnesses and plaintiffs. The Joint Office has also advocated with the Government for the abolition of the death penalty. Thus, in its work with the Government and civil society to implement a follow-up plan to the universal periodic review recommendations, it has suggested that legislation be drafted to abolish the death penalty.

54. In June and July 2014, in Goma, Bukavu, Lubumbashi, Bunia and Kisangani, the United Nations Joint Human Rights Office organized workshops for civil society organizations on reform proposals in the area of transitional justice, specifically for the reorganization of the judiciary to enable it to prosecute serious crimes under international law. Following those workshops, participants issued collective advocacy letters to their parliamentarians on the subject. In November, the Joint Office co-organized a workshop with the International Centre for Transitional Justice on strengthening the judicial framework and its ability to investigate and prosecute grave crimes in the Democratic Republic of the Congo, which analysed proposed reforms on transitional justice, including the possible establishment of specialized chambers to try international crimes.

55. The United Nations Joint Human Rights Office supported the transfer of 29 high-risk inmates, including Colonel 106, to more secure facilities to address persistent security concerns in prison. Indeed, 1,510 detainees escaped from prisons during the period under review. Systematic and mass escapes from prison represent a serious setback to the fight against impunity. The dilapidated prison infrastructure in some cases, combined with negligence, and sometimes corruption of prison guards, explain many of the escapes.

F. Protection of civilians

56. The Human Rights Committee recommended that the Government of the Democratic Republic of the Congo take all the steps necessary to strengthen its capacity to protect civilians, especially women and children, in zones of armed conflict. It advised that relevant guidelines be made available to all members of the armed forces and that human rights training be made compulsory for them (see CCPR/C/COD/CO/3, para. 13). During the 2014 universal periodic review, the Government was urged to take the measures necessary to protect civilians in any situation of armed violence (see A/HRC/27/5, para. 134.163).

[9] To South Kivu, Maniema, Equateur and Orientale Provinces.

1. Current situation and action taken by the Government

57. In eastern Democratic Republic of the Congo, civilians remain vulnerable to the continued armed conflict between the Congolese army and various armed groups. The United Nations Joint Human Rights Office continued to document the killing and injuring of civilians, as well as rapes, abductions and looting by armed groups and State agents in the context of operations against such groups.

58. During the reporting period, military operations to neutralize armed groups, including Operation Sukola I against the Allied Democratic Forces and Operation Sukola II against the Forces démocratiques de libération du Rwanda and the Forces de résistance patriotique en Ituri, seem to have resulted in the radicalization of these groups. All those combatants targeted civilians in retaliation for the victims' real or perceived support to FARDC in military operations against them.

59. On the night of 6 June 2014, 31 civilians were killed by members of a Barundi and Banyamulenge militia group in Mutarule, Uvira territory, South Kivu, in an outdoor church service. The FARDC commander stationed nearby had reportedly been repeatedly warned and informed of the attack by the local population, but failed to prevent or stop the killings. From 1 October to 31 December 2014, a series of attacks in several localities of Beni territory resulted in the killing of at least 237 civilians by combatants of the Allied Democratic Forces. At the request of the Government, the United Nations Joint Human Rights Office has granted support to the national investigation into the killings.

60. In the context of the drawdown of MONUSCO, it is especially important that State security forces take the lead in the protection of civilians. To this effect, FARDC and the MONUSCO force regularly undertake day and night joint patrols in volatile areas. Officers of the United Nations police also cohabit with Congolese national police agents in provincial offices of eastern Congo. Provincial officials participate alongside MONUSCO and other protection stakeholders in the provincial Senior Management Group on Protection.

2. Action taken by the United Nations Joint Human Rights Office

61. The protection of civilians remains the core priority for MONUSCO and the United Nations Joint Human Rights Office. Besides various protection mechanisms, in an effort to be proactive rather than reactive in protecting civilians, the Joint Office spearheaded the establishment of an early warning alert and response cell, with corresponding provincial and local entities. MONUSCO also stepped up efforts to protect civilians through increased interaction with the local population and advocacy efforts with local and national authorities. It conducted awareness-raising activities on the early warning networks in areas that could be affected by military operations against the Forces démocratiques de libération du Rwanda and worked with some 90 communities in North Kivu to improve local early warning systems. Furthermore, through routine inductions for newly deployed United Nations police and MONUSCO, the Joint Office has sought to maintain the focus on protection in eastern Democratic Republic of the Congo.

62. Protection of civilians in the context of the series of attacks by the Allied Democratic Forces in Beni territory, North Kivu, mainly during the period October-December 2014, presented some challenges.[10] However, in view of FARDC unilateral

[10] See *Report of the United Nations Joint Human Rights Office on international humanitarian law violations committed by Allied Democratic Forces (ADF) combatants in the territory of Beni, North Kivu province, between 1 October and 31 December 2014*, jointly published by OHCHR and MONUSCO in May 2015.

operations against the Forces démocratiques de libération du Rwanda. MONUSCO has heightened its alert networks in Sukola II areas of operation, namely North Kivu and South Kivu, to ensure that information and alerts on threats to civilians are properly channelled and addressed by the MONUSCO force and Congolese authorities. In the light of imminent heightened operations against the Forces de résistance patriotique en Ituri, the United Nations Joint Human Rights Office has been engaging MONUSCO in a joint planning exercise to ascertain whether the plan incorporates appropriate protection concerns.

3. Human rights due diligence policy and the role of the United Nations Joint Human Rights Office

63. In compliance with the human rights due diligence policy on United Nations support to non-United Nations security forces, the United Nations Joint Human Rights Office continued to screen FARDC battalion commanders and Congolese national police agents for past human rights violations as a condition for any support provided by MONUSCO or the United Nations country team. During the reporting period, the Joint Office conducted 1,805 screenings for the provision of recommendations to MONUSCO leadership prior to the provision of Mission support to security forces. While this number comprises personnel who have been screened more than once, 906 distinct individuals have been screened. More than 85 per cent of the screened officers are FARDC while the remaining officers belong to the police. Information collected by the Joint Office through monitoring and investigation functions remained critical for the Mission's ability to support joint operations.

64. In January 2015, on the eve of the launch of the planned FARDC-MONUSCO joint operation against the Forces démocratiques de libération du Rwanda in North Kivu, the appointment of two FARDC generals as commanders to key positions within the operation led MONUSCO to withdraw its support. This was due to records of gross human rights violations for which the commanders allegedly bore direct and command responsibility, as well as with a view to preventing human rights violations in the context of operations supported by MONUSCO. None of the FARDC units falling under their command received MONUSCO support. The Government then decided that Sukola II would be a unilateral operation. Those developments highlighted the need for improved communication between MONUSCO and the Government on the human rights due diligence policy.

III. Cooperation with United Nations human rights mechanisms and national mechanisms to promote and protect human rights

A. Action to implement universal periodic review recommendations

65. The United Nations Joint Human Rights Office has been working closely with the Government and civil society to support implementation of universal periodic review recommendations made to the Democratic Republic of the Congo in May 2014. On 23 and 24 December 2014, the Ministry of Justice and Human Rights met with various stakeholders to adopt an implementation plan for review recommendations. The Prime Minister is to submit the plan to all ministries concerned to start the implementation.

66. In November and December 2014, the United Nations Joint Human Rights Office and the Ministry of Justice and Human Rights organized training workshops in the provincial capitals of South Kivu, Orientale, North Kivu and Katanga on the universal periodic review process and its final recommendations, including the role of each stakeholder in their implementation. Participants included the *entités de liaison*, provincial government officials, and representatives of FARDC, the Congolese national police, the

National Intelligence Agency and leaders of civil society. Thirty-three participants were trained in Goma, 37 in Bukavu, 38 in Kisangani and 29 in Lubumbashi. The Joint Office also conducted awareness-raising meetings on the subject for 428 beneficiaries in Kindu, Kalemie, Matadi, Bandundu, Kinshasa, Butembo, Mbuji-Mayi, Uvira, Dungu and Bunia.

B. Update on national mechanisms for the protection and promotion of human rights

1. National Human Rights Commission

67. Members of the National Human Rights Commission were appointed by Parliament on 1 April 2015 and confirmed by presidential decree — over two years after the enabling legislation was promulgated (March 2013). The United Nations Joint Human Rights Office had previously engaged with the human rights NGOs' coordination committee and the President of the Parliamentarians' Network for Human Rights, and advocated a consensual approach in nominating qualified candidates according to the Organic law and the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). On 24 April 2015, the Commission adopted its internal rules and regulations, which were submitted to the Constitutional Court for review on 30 April. The Joint Office provided technical assistance to the subcommittee tasked with drafting the rules.

68. One of the 11 candidates to the National Human Rights Commission, who was not appointed, challenged the designation procedure before the Constitutional Court on 6 April 2015, arguing that the process violated several provisions of the Constitution and of the internal rules of the National Assembly. At the time of drafting, the Constitutional Court had not yet answered this claim of unconstitutionality.

2. *Entités de liaison*

69. No significant progress has been observed during the reporting period to ensure that the *entités de liaison* are operational and effective since their establishment by decree No. 09/35 of 12 August 2009 and their official launch on 17 April 2010. Despite continued efforts by the United Nations Joint Human Rights Office to advocate that the authorities make these entities fully operational at the national and provincial levels, they remain inactive. Some provincial governors complained of not having funds to implement the mechanism, while other stakeholders considered that the situation was due to lack of political will.

IV. Conclusion and recommendations

A. Conclusion

70. **During the period under review, the human rights situation in eastern Democratic Republic of the Congo continued to be affected by conflict and violations committed by armed groups and FARDC in the context of military operations against those groups. In the western part of the country, the human rights situation was affected by political factors, with restrictions to the political space and violations of the rights to freedom of expression, association and peaceful assembly.** The **intervention of State agents in the repression of political opponents and other civil society actors, including excessive use of force against demonstrators, arbitrary arrests and incommunicado detention, without judicial oversight, are of serious concern, particularly in the lead-up to the upcoming electoral cycle.**

71. **The conclusion of several emblematic trials, including of FARDC officers, was a welcome step forward in the fight against impunity. However, structural problems in the justice system, particularly its lack of independence when dealing with cases against political opponents and civil society actors, remain of great concern and have resulted in the still low prosecution rate of human rights violations.**

72. **The High Commissioner deplores the expulsion of the former Director of the United Nations Joint Human Rights Office from the Democratic Republic of the Congo in October 2014 following the publication of the report on Operation Likofi.[11] He notes with concern that the Government had decided, in January 2015, to carry out the Sukola II operation unilaterally led by two FARDC generals suspected of having committed gross human rights violations.**

B. Recommendations

73. **The High Commissioner recommends that the Government of the Democratic Republic of the Congo:**

(a) Establish judicial and non-judicial mechanisms to fight against impunity for serious past and ongoing human rights violations, committed across the country, including through the adoption of the law on the specialized chambers;

(b) Take all the legislative measures necessary to ensure that all those convicted of crimes can appeal against their convictions and sentences to a higher court;

(c) Ensure that the fundamental freedoms of all people in the Democratic Republic of the Congo are respected in the run-up to the upcoming elections;

(d) Ensure that the National Human Rights Commission is fully operational, including through the allocation of appropriate financial and logistical capacity, and that it works in line with the Paris Principles;

(e) Take all the measures necessary to ensure that the defence and security forces of the Democratic Republic of the Congo fully respect international human rights and humanitarian law, including by reinforcing oversight and accountability mechanisms;

(f) Work towards the full implementation of the FARDC action plan to stop and prevent underage recruitment, sexual violence against children and other grave child rights violations in the Democratic Republic of the Congo, and ensure that perpetrators are systematically brought to justice, and that victims receive timely and appropriate reparation;

(g) In accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and with the assistance of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, create a national mechanism for the prevention of torture independent of the Government;

(h) Establish and empower national institutions and mechanisms for the coordination and implementation of recommendations of the United Nations human rights mechanisms;

[11] The High Commissioner issued a press release on 19 October 2014 to condemn the expulsion of the Director of the United Nations Joint Human Rights Office.

(i) Reinforce its collaboration with the United Nations Joint Human Rights Office, MONUSCO and other partners to ensure better protection of human rights in the country.